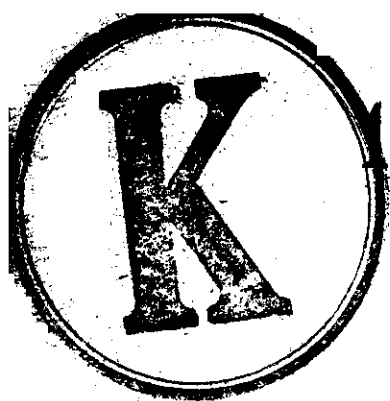




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File No. O. D. P

(Debt Adjustment)

Legal Department

/52

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BRANCH

P5(E)

Subject: Opinions under the

Displaced Persons (Debt Adjustment)

Act 1951

File No. O. D. P. (Debt Adjustment)

Gen. 194

/52

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C O N T E N T S.

Legal Department File D.P.I. (Debt Adjustment) 1952.

Sr. R. I. / O. No. Subject. Pages.
No. -----

O. D. P.I.
(Debts adjustments)
1952.

Opinions under the
displaced persons (Debt
Adjustment) Act, 1951.

1. R.I.No. 22513.
25.9.52.

Section 15.
Authority to exercise
jurisdiction and to order
removal of attachment passed.

1-5.

V.M.D./11-6
msc.

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L.D.R.I.No.22533
dt./25.9.52.

Submitted.

Please see D.D. under Secretary's note date 19th Septr. 1952 on pp. 2-3-ante.

The facts of the case are stated in the letter of the Commissioner of Labour dated 28th August 1952 at p. 1 of the correspondence section.

An application was filed under section 15 of the Payment of Wages Act, 1936 by the Inspector before the Authority under the Act against the employer Sansar Samachar Press Bombay for recovery of wages of its workmen for the months of October and November 1952. The Authority has made a direction order against the employer to deposit the requisite amount. The employer failed to deposit and hence the property of the employer has been attached by the Chief Presidency Magistrate Bombay under section 15(5) (b) of the Act. In the meantime however, the employer has appealed to the Small Causes Court against the direction order made by the Authority under section 17 of the Act. But the Court of Small Causes has ^mconfirmed the direction order. The employer, thereafter, approached the Authority to raise the attachment ⁱⁿ view of the provisions of the Displaced Persons (Debts Adjustment) Act, 1951. The Authority decided the matter ex-parte and made a direction order for removal of attachment. Thereafter the Inspector has filed a fresh application to set aside the exparte direction order and this application is now pending before the authority. In the meantime the Commissioner of Labour has raised the following questions for consideration.

- 1) Whether the wages of the employers can be said to be debt under the Displaced Persons (Debts Adjustment) Act, 1951.

- 2) Whether the proceedings under the Displaced Persons (Debt Adjustment) Act, 1951 can be instituted in the Payment of Wages Court.
- (3) Whether the Payment of Wages Court or the Authority's Court can be said to be a Civil Court for the purpose of the Displaced Persons (Debt Adjustment) Act, 1951.
- (4) Whether the employer who is settled and has established his printing press in Bombay over three years ago can be said to be a displaced person for the purpose of the Displaced Persons (Debt Adjustment) Act, 1951.
- (5) Whether the employees who are involved being displaced persons could be deprived of their earned wages.

The Under Secretary D.D. considers that although the liability in regard to wages of workers would be debt within the meaning of section 2 (2)(b) of the Displaced persons (Debt Adjustment) Act, 1951, the provisions of that Act would come into operation only when an application under that Act is filed by the employer or the workmen. The R.L.A. is requested to advise and also to consider the grant of legal assistance in the conduct of the proceeding before the Authority.

Section 15 of the Displaced Persons (Debts Adjustment) Act, 1951 provides that where a displaced debtor has made an application to the Tribunal under section 5 or sub-section 2 of section 11, the following consequences shall ensue, Viz., :-

- a) All proceedings pending at the date of the said application in any Civil Court in respect of any debt to which the displaced debtor is subject shall be stayed etc.
- b) All attachments, injunctions etc issued by any such Civil Court and in force at the time of the said application in respect of any such debt shall cease to have effect and no fresh process shall issue.

Under section 15 of the Displaced Persons (Debt Adjustment) Act, 1951, where a displaced debtor has made an application to the Tribunal under section 5 or under sub-section (2) of section 11 the following consequences shall ensue, namely:-

- (a) all proceedings pending at the date of the said application in any civil court in respect of any debt to which the displaced debtor is subject, (except proceedings by way of appeal or review or revision against decrees or orders passed against the displaced debtor) shall be stayed, etc.;
- (b) all attachments, injunctions, orders appointing receivers or other processes issued by any such court and in force at the date of the said application in respect of any such debt shall cease to have effect and no fresh process shall, except as hereinafter expressly provided, be issued;

It is clear from this provision that attachments shall cease to have effect ^{only} where a displaced debtor has made an application to the tribunal under section 5 or under sub-section (2) of section 11 'Tribunal' is defined in clause (12) of section 2, meaning any civil court specified under section 4 as having authority to exercise jurisdiction under this Act. Section 4 provides that the State Government may by notification in the Official Gazette specify any civil court or class of civil courts as the Tribunal or Tribunals having authority to exercise jurisdiction under this Act and may define the area in which the extent to which such jurisdiction may be exercised. In the present case it appears that no such application has been made under section 5 or section 11(2) to any Tribunal; and the authority under the Payment of Wages Act is not a Civil Court nor has it been notified as such under section 4. Consequently, the removal of attachment ordered by the authority under the Payment of Wages Act in the present case is ultra vires. Besides, the wages which have been awarded are wages of October and November 1951, and these wages would not be a debt falling under any of the sub-clauses (a), (b) and (c) of clause (6) of section 2.

3. The other points raised in this case are not relevant and the authority under the Payment of Wages Act will have to cancel the order of removal of attachment passed by him.

Sd/- P.M.Lad
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Remembrancer of Legal Affairs.

U.R. to B.D. No. 18348 / A , dated the 3rd November 1952.

V.M.D./11-6
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